

Exhibit 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, individually and as
Executrix of the Estate of DANTE TAYLOR,

Plaintiff

DEFENDANT **C.O. JAMES HORBETT'S**
RESPONSE TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES AND REQUEST
FOR DOCUMENTS

v.

20-CV-00233(JLS)(JJM)

STEWART ECKERT, et. al.

Defendants

Defendant **JAMES HORBETT**, as and for his response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, subject to the protective order in place, responds as follows

I. GENERAL OBJECTIONS

Defendant Horbett makes the following general objections to Plaintiff's First Set of Interrogatories as follows:

1. Defendant objects to any and all interrogatories to the extent that they would require the disclosure of information which comes within attorney-client privilege.
2. Defendant objects to any and all interrogatories to the extent that they would require the disclosure of information which comes within the work-product protection, including information obtained as part of the preparation of this case, or in anticipation of defendant asserting, pursuing and/or defending against the claims in this case or any other related case, and including actions taken for the purpose of

preparing the answer for defending against the claims in this case or any other related case.

3. Defendant objects to any and all interrogatories to the extent that they would require the disclosure of information which would identify the medical condition or claims, or other personal information relating to him.
4. Defendant objects to any and all interrogatories to the extent that they would require the disclosure of information which is the subject of a non-disclosure agreement and/or a confidentiality agreement with a third-party.
5. Defendant objects to each interrogatory propounded by plaintiff to the extent that the interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.
6. Defendant objects to each interrogatory propounded by plaintiff to the extent that the interrogatory is vague, overly broad, harassing, burdensome, vexatious and/or oppressive.
7. All responses are made to plaintiff's interrogatories without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving:
 - a. All questions as to competency, relevance, materiality, privilege, and admissibility of evidence for any purpose in any subsequent proceeding or the trial of this or any other actions;
 - b. The right to object on any ground to the use of any of these answers in any subsequent proceeding or the trial of this action;

- c. The right to object on any ground at any time to a demand for further response to these or any other interrogatories or other discovery proceedings involving or relating to the subject matter of the interrogatories herein answered; and
- d. The right to supplement and/or amend these responses based upon the recollection of persons presently available or the discovery of additional information.

All responses that may be made to the interrogatories are subject to all of the foregoing objections, and these objections are not waived by furnishing any information in response to plaintiff's Interrogatories. Moreover, the responding party reserves the right to supplement and/or amend his response at a later date.

INTERROGATORY NO. 1:

Identify every person who has knowledge or information concerning the incident.

ANSWER:

Defendant Horbett is aware of the following persons who have knowledge concerning the use of force incident concerning the Plaintiff:

Sgt. Timothy Lewalski

C.O. Thomas J. White

C.O. Dylan Janis

See Use of Force Report for Said Incident.

INTERROGATORY NO. 2:

Identify every employee of the State of New York – other than those listed in response to Interrogatory No. 1 – who has knowledge or information concerning the Incident.

ANSWER:

Upon information and belief all those listed in the Amended Complaint may have knowledge of the incident.

INTERROGATORY NO. 3:

Identify any and all DOCCS employees who used any type of physical force on Dante Taylor on October 6, 2017.

ANSWER:

All DOCCS employees to the Defendant Horbett's knowledge were set forth in the Use of Force Report.

INTERROGATORY NO. 4:

Identify any and all DOCCS employees who witnessed any type of physical force on Dante Taylor on October 6, 2017.

ANSWER:

All DOCCS employees to the Defendant Horbett's knowledge were set forth in the Use of Force Report.

INTERROGATORY NO. 5:

Identify any and all DOCCS employees who escorted or otherwise transported Dante Taylor from his cell to any other location on October 6, 2017, following the incident.

ANSWER:

Inmate Taylor was escorted by C.O. Horbett, C.O. White, C.O. Janis, and Sgt. Lewalski from his cell to the first-floor lobby area of A-Block.

INTERROGATORY NO. 6:

State your phone number(s) and carrier(s) for all cell phones that you utilize during the years of 2017, 2018, 2019, 2020, and 2021.

ANSWER:

Objection. Defendant Horbett objects to this interrogatory on the grounds set forth in the general objections, including, but not limited to, the grounds that this interrogatory seeks information that is not relevant nor reasonably calculated to lead to the discovery of evidence relevant to this lawsuit; the request is overly broad, unduly vague, and ambiguous.

INTERROGATORY NO. 7:

Identify each cell phone and/or text messaging and/or instant messaging service (e.g. AT&T, Facebook messenger, T-Mobile, U.S. Cellular, Verizon, WhatsApp, etc.) of which you were a customer during the years of 2017 to the present for each such service identified, include name, address, e-mail address and phone number of the account holder, your cell phone number or user name or avatar, and the dates during which you used the account.

ANSWER:

Objection. Defendant Horbett objects to this interrogatory on the grounds set forth in the general objections, including, but not limited to, the grounds that this interrogatory seeks information that is not relevant nor reasonably calculated to lead to the discovery of evidence relevant to this lawsuit; the request is overly broad, unduly vague, and ambiguous.

INTERROGATORY NO. 8:

Identify any internet-based social networking sites, (Facebook, Snapchat, Tumblr, Twitter, WhatsApp, Google+, Instagram, LinkedIn, etc.) of which you are currently a member and/or was a member during the years of 2017 to the present. For each such site identified, please include the name, address, e-mail address and phone number of the account holder, your username or avatar, the ULR where the account was/is available, and the dates during which you used the account.

ANSWER:

Objection. Defendant Horbett objects to this interrogatory on the grounds set forth in the general objections, including, but not limited to, the grounds that this interrogatory seeks information that is not relevant nor reasonably calculated to lead to the discovery of evidence relevant to this lawsuit; the request is overly broad, unduly vague, and ambiguous.

INTERROGATORY NO. 9:

Identify each occasion on which you have been arrested, including the date of the arrest, the charges for which you were arrested, and the amount of time that you spent incarcerated.

ANSWER:

Defendant Horbett was arrested in 1990 for Driving While Intoxicated. The charge was reduced to Driving While Alcohol Impaired. There was no incarceration.

INTERROGATORY NO. 10:

Identify each occasion in which you have been convicted of a Felony or Misdemeanor, including the date of the conviction, the charges of which you are convicted, and amount of time that you spent incarcerated as a result of each conviction.

ANSWER:

Defendant Horbett has not been convicted of any Felony or Misdemeanor Offenses.

INTERROGATORY NO. 11:

Identify each lawsuit to which you have been a party, including the Court in which the matter was pending, the docket or index number, and the disposition of the matter.

ANSWER:

Defendant Horbett was named as a defendant in the following lawsuits:

- (1) Lorcen Burroughs v. Bobo, et. al.
Docket No. 11-cv-047 S WDNY
Disposition: Upon information and belief closed – See Pacer
- (2) Jamal Cox v. Smith & Horbett
Docket No. 13-cv-6497-FPG WDNY
Disposition: No-caused after trial – See Pacer
- (3) Darnell Green v. Lewalski, et. al.
Docket No. 18-cv-774-EAW WDNY
Disposition: Upon information and belief closed – See Pacer

INTERROGATORY NO. 12:

Identify each occasion on which you have given testimony or statements regarding the incident and events alleged in the Amended Complaint.

ANSWER:

Subject to the protective order, Defendant Horbett has given a statement – Question and Answers – to OSI Investigators on February 28, 2018, and testimony on February 1, 2019 at the Arbitration Hearing.

INTERROGATORY NO. 13:

Identify all documents prepared by you, or any other person, that relates to the incident, claims and subject matter of this litigation.

ANSWER:

Subject to the protective order, the following documents have been prepared by:

- (1) Use of Force – C.O. Horbett

- (2) Use of Force Staff Memorandum – C.O. Horbett
- (3) Use of Force Report - D. Dirienzo
- (4) Use of Force Report – Part B – Addendum – D. Dirienzo
- (5) Use of Force Report = Sgt. Lewalski
- (6) Use of Force – Staff Memorandum – C.O. Janis
- (7) Use of Force Report – C.O. White
- (8) Use of Force – Staff Memorandum – C.O. White
- (9) Inmate Misbehavior Report – Sgt. Lewalski
- (10) Employee Accident/Injury Report – C.O. Horbett
- (11) Employee Accident/Injury Report – C.O. Janis
- (12) Employee Accident/Injury Report – C.O. White
- (13) Employee Accident/Injury Report – Sgt. Lewalski

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents concerning Dante Taylor.

ANSWER:

Defendant Horbett objects to this demand as overly broad, vague, and unduly burdensome. Without waiving said objection, Defendant Horbett provides the Inmate Injury Report, Inmate Cell Search, and Inmate Photos. Upon information and belief all documents concerning inmate Taylor are in the possession and control of the DOCCS.

DOCUMENT REQUEST NO. 2:

All documents concerning the incident.

ANSWER:

Defendant Horbett objects to this demand as overly broad, vague, and unduly burdensome. Without waiving said objection, Defendant Horbett provides Use of Force Reports from C.O. Horbett, Sgt. Lewalski, C.O. White, and C.O. Janis. Upon information and belief all documents of the incident are in the possession and control of the DOCCS.

DOCUMENT REQUEST NO. 3:

All documents concerning Use of Force incidents and unusual incidents, where you either (a) prepared either as participants or witnesses, the document(s) or (b) were identified as having been present or involved.

ANSWER:

See documents attached in Answer to Document Request No. 2.

DOCUMENT REQUEST NO. 4:

All documents concerning any incidents of alleged professional misconduct involving you, including all documents relating to any OSI investigation involving you.

ANSWER:

Subject to the protective order attached are:

- (1) OSI Investigation Question and Answers Interview of Defendant Horbett dated February 28, 2018.
- (2) Documents from an alleged DOCCS harassment complaint by a fellow correction officer – the complaint was dismissed finding no violations of any workplace policies.
- (3) See attached Employment File of Defendant Horbett.

DOCUMENT REQUEST NO. 5:

Notices of Discipline issued to you at any time.

ANSWER:

Subject to the protective order, Defendant Horbett is in possession of the Notice of Discipline as it relates to conduct arising out of this lawsuit – the said Notice of Discipline was not upheld after an Arbitration Hearing and ordered expunged from Defendant Horbett's personnel file. Attached is a copy of the Notice of Discipline and the Arbitrator's Award Notice of Discipline dated 05/29/2018 – the Arbitrator's Award is dated 03/27/2019.

Also, see Defendant Horbett's DOCCS employment file attached.

DOCUMENT REQUEST NO. 6:

All documents created by you concerning the events alleged in the Amended Complaint, including, but not limited to (a) Incident Reports; (b) Use of Force Memoranda; (c) Employee Accident/Injury Reports; and/or (d) statement to investigators.

ANSWER:

Attached are the following documents:

- (1) Use of Force Staff Memorandum
- (2) Employee Accident/Injury Report
- (3) OSI Investigation Statement

DOCUMENT REQUEST NO. 7:

All written statements made by or taken from you regarding the events alleged in the amended complaint.

ANSWER:

See Answers No. 2, 3, and 6.

DOCUMENT REQUEST NO. 8:

All documents concerning your employment with DOCCS, including but not limited to documents sufficient to show whether you are currently employed by DOCCS and whether you have at any time been suspended, terminated, or separated for any period of time from your employment with DOCCS.

ANSWER:

Subject to the protective order, attached is Defendant Horbett's DOCCS employment file.

DOCUMENT REQUEST NO. 9:

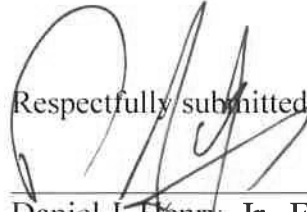
Any and all documents evidencing your work performance, including but not limited to (a) training records; (b) evaluations; (c) recommendations for termination or promotion; (d) reports and records of counseling sessions and corrective interviews; and (e) disciplinary records.

ANSWER:

Subject to the protective order, see response to Document Request NO. 8.

Dated: December 31, 2021
Hamburg, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Henry, Jr.', is written over a horizontal line.

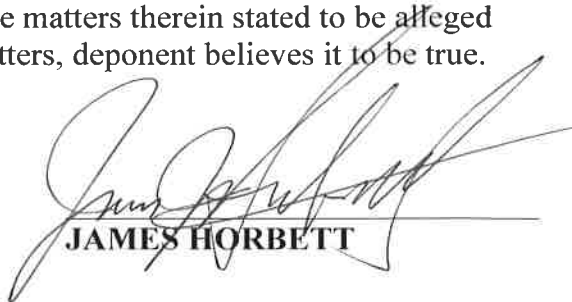
Daniel J. Henry, Jr., Esq.
Attorney for Defendant Horbett
16 Main Street
Hamburg, NY 14075
(716) 648-0510

TO: Katherine R. Rosenfeld, Esq.
Marissa R. Benavides, Esq.
600 Fifth Avenue, 10th Floor
New York, NY 10020

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

JAMES HORBETT, being duly sworn, deposes and says that he is a Defendant in the within action, that he has read the foregoing Response to Plaintiff's First Set of Interrogatories and Request for Documents, and knows the contents thereof; that the same is true to his own knowledge and belief, except to those matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.

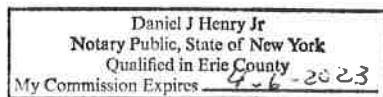


JAMES HORBETT

Sworn to before me this 31st
Day of December, 2021.



Notary Public



CERTIFICATE OF SERVICE

I, Daniel J. Henry, Jr., hereby certify that I caused the foregoing **Defendant James Horbett's Response to Plaintiff's First Set of Interrogatories and Request for Documents** to be served by email on December 31, 2021 on the following parties:

Katherine Rosenfeld, Esq.
Emery, Celli, Brinckerhoff,
Abady, Ward & Maazel, LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000



Daniel J. Henry, Jr.

ATTACHED DOCUMENTS

1. Cell Frisk/Contraband Receipt
2. Search Contraband Report
3. Photos – Dante Taylor
4. Inmate Misbehavior Report – T. Lewalski
5. Inmate Overview – Dante Taylor
6. Inmate Injury Report – Dante Taylor
 A.) Request For Urinalysis
7. Employee Accident/Injury Report – J. Horbett
8. Employee Accident/Injury Report – D. Janis
9. Employee Accident/Injury Report – T. White
10. Employee Accident/Injury Report – T. Lewalski
11. Use of Force Report – 10/11/2017
12. Use of Force Report – 10/06/2017 – J. Horbett
13. Use of Force – Staff Memorandum (10/06/2017) – J. Horbett
14. Use of Force Report – 10/06/2017 – D. Dirienzo
15. Use of Force Report – Part B – Addendum – 10/06/2017 – D. Dirienzo
16. Use of Force Report – 10/06/2017 – T. Lewalski
17. Use of Force – Staff Memorandum – 10/006/2017 – D. Janis
18. Use of Force Report – 10/07/2017 – T. White
19. Use of Force – Staff Memorandum – 10/07/2017 – T. White
20. Documents from alleged DOCCS workplace harassment complaint – November, 2013

21. OSI Investigation Interview-2/28/18; Acknowledge Receipt of NOD
22. Arbitrator's Award/Notice of Discipline(5/29/18) – 3/27/19
23. DOCCS Employment file- James Horbett